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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ALLEN ROBLEDO,

Defendant and Appellant.

B207677

(Los Angeles County
Super. Ct. No. YA 069212)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
James R. Brandlin, Judge. Affirmed.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

SUMMARY

Richard Allen Robledo pled guilty to all counts in an eight-count information charging him with grand theft of personal property, petty theft with priors, three counts of second degree robbery, assault with a firearm, criminal threats, and grand theft of a firearm. He also admitted various enhancement allegations and prior convictions. Robledo was sentenced to 19 years in state prison. On appeal, Robledo's counsel filed a brief requesting this court's independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436. Our review of the record shows no arguable issues, and we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On August 27, 2007, Robledo took more than \$400 worth of razor blades from a Target store. When he exited, he was confronted by two loss prevention officers (Kareem McMorris and Aaron Grasse) employed by Target. A struggle ensued, and Robledo pulled out a replica handgun. He pointed the replica at the two men and fled with the merchandise to the nearby residence of 73-year-old Anthony Cardoza. He entered the residence, apparently through an open door, to hide from the police. While inside, Robledo found a real handgun belonging to Cardoza. When Cardoza returned to his home, he found Robledo crouched in his bedroom closet. Cardoza grabbed Robledo to pull him out of the closet, and Robledo hit Cardoza in the ribs with the handgun and threatened to kill him. Cardoza released his grip on Robledo, who then fled with the gun and was subsequently apprehended by the police.

An eight-count information was filed on October 23, 2007, charging Robledo as follows:

- Count 1: Grand theft of personal property, a felony (Pen. Code, § 487, subd. (a));¹
- Count 2: Petty theft with a prior prison term (§ 666), a felony;²

¹ All statutory references are to the Penal Code, unless otherwise specified.

² The previous convictions alleged were for grand theft in 1988; second degree burglary in 1992 and 1996, and petty theft with a prior in 2006.

- Count 3: Second degree robbery (§ 211) against victim Aaron Grasse (a violent felony under section 667.5, subd. (c) and a serious felony under section 1192.7, subd. (c));
- Count 4: Second degree robbery (§ 211) against victim Kareem McMorris, a violent felony (§ 667.5, subd. (c)) and a serious felony (§ 1192.7, subd. (c));
- Count 5: Assault with a firearm (§ 245, subd. (a)(2)) against victim Anthony Cardoza (with presumptive minimal jail time under § 1203.095), a serious felony (§ 1192.7, subd. (c));
- Count 6: Criminal threats (§ 422), a serious felony (§ 1192.7), with an allegation that Robledo personally used a firearm under § 12022.5, subd. (a) (also causing the offense to become a serious felony (§ 1192.7, subd. (c)(8)) and a violent felony (§ 667.5, subd. (c)(8)));
- Count 7: Second degree robbery (§ 211) against victim Anthony Cardoza, a violent felony (§ 667.5, subd. (c)) and a serious felony (§ 1192.7, subd. (c)), with allegations that Robledo personally used a firearm (§ 12022.53, subd. (b)) and the victim was over the age of 65 (§ 667.9, subd. (a)); and
- Count 8: Grand theft of a firearm (§ 487, subd. (d)(2)), a serious felony under § 1192.7, subd. (c).

The information further alleged that Robledo suffered nine prior convictions³ for which he served prison terms (§ 667.5, subd. (b)), and did not remain free of prison custody for (and committed an offense resulting in a felony conviction during) the five-year period after conclusion of the term.

The case was called for trial on February 8, 2008. At that time, the People were making no offers of settlement and the court declined a request to give an indicated sentence. The court stated that Robledo could enter an open plea; the court would

³ The prior convictions were for forgery and grand theft in 1988; violations of Vehicle Code 28002 in 1990, 1994 and 2002; escape (§ 4532, subd. (b)) in 1990; second degree burglary in 1992 and 1996; and petty theft with a prior in 2006.

consider all factors in mitigation or aggravation; and Robledo's maximum exposure was "somewhere in the neighborhood of 25 years" Robledo waived his constitutional rights, pled guilty to all the charged offenses, and admitted the special allegations. Robledo's counsel stated for the record that he had advised Robledo about his maximum exposure, "both after trial and potentially what he could get after the sentencing hearing," and "told Mr. Robledo he was better off doing a trial." The court confirmed with counsel that "you're stipulating to a factual basis, you're joining in the waiver of rights, but you don't concur in the defendant's decision to enter the plea." Robledo then confirmed that he was entering the plea freely and voluntarily because he felt it was in his best interests to do so. The court accepted the waiver of rights and entry of the plea and admissions, finding "they're knowingly, intelligently, and voluntarily made."

The sentencing hearing was held on March 21, 2008. In the interim, Robledo's counsel subpoenaed documents from the Department of Corrections, which were reviewed in camera. The subpoena was quashed as to some documents; other documents relevant to mitigating Robledo's sentence – showing that while previously incarcerated Robledo had given information to Department of Corrections officials that assisted them in preventing harm to prison staff and other inmates – were redacted and provided to counsel.

At the sentencing hearing, the court stated it had considered the probation officer's pre-plea report, the transcript of the preliminary hearing, and the sentencing memoranda (together with attachments) presented by counsel. The court sealed the sentencing memoranda, based on information contained in the defense memorandum, and observed that the mitigating factors were substantial and well-documented. The defense argued that a sentence in the range of 16 years or a little bit more than that would be fair. (The prosecutor had offered 16 years before the preliminary hearing, but revoked the offer when Robledo decided to proceed with the preliminary hearing. Defense counsel stated that "Mr. Robledo, when it came down to his trial, indicated to me that he wanted to take the 16-year offer. He even indicated that he might be willing to take a little bit more than

that.”) The prosecution argued that Robledo’s record was a strong aggravating factor, but that in light of the mitigating evidence, a sentence of 16 to 20 years would be just.

The court observed that during his prior prison commitments, Robledo had “probably saved lives,” and his level of good citizenship while in prison was entitled to “tremendous mitigating force.” On the other hand, while out of custody “he does a miserable job of being a good citizen,” and “the facts of this case, the defendant’s attempts to avoid being taken into custody, caused him to be incarcerated for an incredible period of time.” The court also observed that a number of Robledo’s prior convictions involved felony evading, where he placed people at risk by his refusal to surrender to the authorities.

The court sentenced Robledo to a total aggregate term of 19 years in state prison, selecting Count 7 (second degree robbery of Cardoza) as the base term, and finding that the mitigating factors and aggravating factors were in equipoise for purposes of the sentence as to the base term. The sentence consisted of a base term of 14 years on Count 7, consecutive one-year terms on each of Count 3 and Count 4, and consecutive one-year enhancements for three of Robledo’s nine prior convictions. Sentences on the other counts were imposed and stayed. Specifically, sentence was imposed as follows:

- Count 7 (second degree robbery of Cardoza): The middle term of 3 years, plus (a) a consecutive term of 10 years for the firearm use enhancement under section 12022.53 and (b) a 1-year enhancement under section 667.9, due to the victim’s age, for a base term of 14 years.
- Count 5 (assault with a firearm against Cardoza): The middle term of 3 years, stayed under section 654.⁴

⁴ The court inadvertently failed to sentence Robledo on Count 5 at the sentencing hearing on March 21, 2008, but did so on March 25, 2008. Robledo was not present at the March 25 hearing, and defense counsel waived Robledo’s appearance. The appellate record does not include a written waiver of the defendant’s right to be present at sentencing, required by section 977. (Section 977 provides that “[i]n all cases in which a felony is charged, the accused shall be present . . . at the time of the imposition of sentence” (§ 977, subd. (b)(1)); it further provides that “[t]he accused may execute a

- Count 6 (criminal threats): The middle term of 2 years, plus a 4-year enhancement under section 12022.5, with the sentence stayed under section 654 and under section 1170.12, subdivision (a)(6).
- Count 8 (grand theft of a firearm): The middle term of 2 years, stayed under section 654 and section 1170.12, subdivision (a)(6).
- Count 3 (second degree robbery of Aaron Grasse): 1 year (one-third of the middle term) to run consecutively to Count 7.
- Count 4 (second degree robbery of Kareem McMorris): 1 year (one-third of the middle term), to run consecutively to count 3.
- Count 1 (grand theft with Target as the victim): the middle term of 2 years, stayed under section 654.
- Count 2 (the section 666 allegation): the middle term of 2 years, stayed under section 654.
- In addition, the court imposed consecutive 1-year enhancements for three prior convictions for felony evading in 1990, 1994 and 2002, which the court viewed as involving “tremendous risk to the public.”

The court exercised its discretion under section 1385 to strike Robledo’s six other prior convictions, which it described as non-serious, non-violent felonies that did not involve a risk to public safety.⁵

Against the 19-year sentence, Robledo was credited with 238 days (207 actual days and an additional 31 days of credit for good-time/work time). The court further

written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court.” (§ 977, subd. (b)(2).)) However, a harmless error analysis applies; even if Robledo’s right to be present was not properly waived, he suffered no prejudice. (See *People v. Riel* (2000) 22 Cal.4th 1153, 1196 [“because this nonwaivable right is statutory and not constitutional, error is reversible only if it is reasonably probable the result would have been more favorable to defendant absent the error”].)

⁵ These were the convictions for forgery and grand theft (1988), escape (1990), second-degree burglary (1992 and 1996), and petty theft with a prior (2006).

ordered Robledo to pay the mandatory minimum restitution fine of \$200 (§ 1202.4, subd. (b)(1)); a parole revocation restitution fine (stayed) of \$200 (§ 1202.45); and a \$20 court security fee (§ 1465.8), and to provide buccal swab samples, thumbprints and other samples as required under section 296.

Robledo filed an appeal from the 19-year state prison sentence imposed on him, and we appointed counsel to represent him. Robledo's appointed counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436, setting forth the facts of the case but raising no specific issues. The clerk of the court directed Robledo's counsel to send the record and a copy of the appellant's brief to Robledo, and Robledo was notified of his right to submit, by brief or letter, any grounds of appeal, contentions or argument he wishes the court to consider, within 30 days of the notice. No brief or letter has been received.

DISCUSSION

We have undertaken a review of the entire record in this case and have found no arguable issues. The sentence imposed comported with all applicable provisions of the Penal Code. The court selected the middle term for the base sentence, stating the factors it considered in mitigation and aggravation, and finding those factors to be in equipoise. Its decision is subject to review for abuse of discretion, but no abuse of discretion appears. (See *People v. Sandoval* (2007) 41 Cal.4th 825, 847-848, 850 [sentencing discretion must be exercised in a manner that is not arbitrary and capricious, is consistent with letter and spirit of the law, and is based on individualized consideration of the offense, the offender and the public interest; trial court abuses its discretion if it relies on circumstances that are not relevant to its decision, or fails to exercise its discretion; trial court has comparable broad discretion regarding other sentencing choices that affect the length of the term].) In short, to the extent the court exercised discretion in its sentencing choices, no basis exists for finding that discretion was abused.

DISPOSITION

The judgment is affirmed.

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O'NEILL, J.^{*}

We concur:

FLIER, Acting P. J.

BIGELOW, J.

*

Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.